

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 GEOFFREY S. ALLEN, State Bar No. 193338
Deputy Attorney General
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 324-5341
6 Facsimile: (916) 327-8643

7 Attorneys for Complainant

8
9 **BEFORE THE**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. VN 2006-1780

14 JENNIFER SPIVEY,
a.k.a. JENNIFER ROWE SPIVEY
15 5601 Pyracuntha Drive
Shingle Springs, California 95682

ACCUSATION

16 Vocational Nurse License No. VN 95119

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this
21 Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational
22 Nursing and Psychiatric Technicians ("Bureau"), Department of Consumer Affairs.

23 2. On or about April 18, 1980, the Bureau issued Vocational Nurse License
24 Number VN 95119 to Jennifer Spivey, also known as Jennifer Rowe Spivey ("Respondent.")
25 Respondent's vocational nurse license was in full force and effect at all times relevant to the
26 charges brought herein and will expire on April 30, 2010, unless renewed.

27 ///

28 ///

1 **JURISDICTION**

2 3. Business and Professions Code ("Code") section 2875 provides, in
3 pertinent part, that the Bureau may discipline the holder of a vocational nurse license for any
4 reason provided in Article 3 (commencing with Code section 2875) of the Vocational Nursing
5 Practice Act.

6 4. Code section 118, subdivision (b), provides, in pertinent part, that the
7 expiration of a license shall not deprive the Bureau of jurisdiction to proceed with a disciplinary
8 action during the period within which the license may be renewed, restored, reissued or
9 reinstated. Pursuant to Code section 2892.1, the Bureau may renew an expired license at any
10 time within four years after the expiration.

11 **STATUTORY PROVISIONS**

12 5. Code section 2878 states, in pertinent part:

13 The Board may suspend or revoke a license issued under this chapter
14 [the Vocational Nursing Practice Act (Bus. & Prof. Code § 2840, et seq.)] for
any of the following:

15 (a) Unprofessional conduct . . .

16

17 (j) The commission of any act involving dishonesty, when that action
18 is related to the duties and functions of the licensee . . .

19 6. Code section 2520.3 states:

20 Pursuant to Welfare and Institutions Code Section 15630(a), licensed
21 vocational nurses are mandated to report any known or suspected instance of
22 dependent adult abuse to an adult protective agency. Failure to make a dependent
adult physical abuse report as required shall constitute unprofessional conduct
within the meaning of Business and Professions Code Section 2878(a).

23 7. Welfare and Institutions Code section 15630 states, in pertinent part:

24 (a) Any person who has assumed full or intermittent responsibility for the
25 care or custody of an elder or dependent adult, whether or not he or she receives
26 compensation, including administrators, supervisors, and any licensed staff of a
27 public or private facility that provides care or services for elder or dependent
adults, or any elder or dependent adult care custodian, health practitioner, clergy
member, or employee of a county adult protective services agency or a local law
enforcement agency, is a mandated reporter.

28 ///

1 (b)(1) Any mandated reporter who, in his or her professional capacity, or
2 within the scope of his or her employment, has observed or has knowledge of any
3 incident that reasonably appears to be physical abuse, as defined in Section
4 15610.63 of the Welfare and Institutions Code, abandonment, abduction,
5 isolation, financial abuse, or neglect, or is told by an elder or dependent adult that
6 he or she has experienced behavior, including an act or omission, constituting
7 physical abuse, as defined in Section 15610.63 of the Welfare and Institutions
8 Code, abandonment, abduction, isolation, financial abuse, or neglect, or
9 reasonably suspects that abuse, shall report the known or suspected instance of
10 abuse by telephone immediately or as soon as practically possible, and by written
11 report sent within two working days, as follows:

12 (A) If the abuse has occurred in a long-term care facility, except a state
13 mental health hospital or a state developmental center, the report shall be made to
14 the local ombudsperson or the local law enforcement agency.

15 Except in an emergency, the local ombudsperson and the local law
16 enforcement agency shall, as soon as practicable, do all of the following:

17

18 (ii) Report to the State Department of Social Services any case of known
19 or suspected abuse occurring in a residential care facility for the elderly, as
20 defined in Section 1569.2 of the Health and Safety Code . . .

21

22 (d) When two or more mandated reporters are present and jointly have
23 knowledge or reasonably suspect that types of abuse of an elder or a dependent
24 adult for which a report is or is not mandated have occurred, and when there is
25 agreement among them, the telephone report may be made by a member of the
26 team selected by mutual agreement, and a single report may be made and signed
27 by the selected member of the reporting team. Any member who has knowledge
28 that the member designated to report has failed to do so shall thereafter make the
report.

1 (e) A telephone report of a known or suspected instance of elder or
2 dependent adult abuse shall include, if known, the name of the person making the
3 report, the name and age of the elder or dependent adult, the present location of
4 the elder or dependent adult, the names and addresses of family members or any
5 other adult responsible for the elder's or dependent adult's care, the nature and
6 extent of the elder's or dependent adult's condition, the date of the incident, and
7 any other information, including information that led that person to suspect elder
8 or dependent adult abuse, as requested by the agency receiving the report.

9 (f) The reporting duties under this section are individual, and no supervisor
10 or administrator shall impede or inhibit the reporting duties, and no person
11 making the report shall be subject to any sanction for making the report.
12 However, internal procedures to facilitate reporting, ensure confidentiality, and
13 apprise supervisors and administrators of reports may be established, provided
14 they are not inconsistent with this chapter.

15

16 ///

1 (h) Failure to report, or impeding or inhibiting a report of, physical abuse,
2 as defined in Section 15610.63 of the Welfare and Institutions Code,
3 abandonment, abduction, isolation, financial abuse, or neglect of an elder or
4 dependent adult, in violation of this section, is a misdemeanor, punishable by not
5 more than six months in the county jail, by a fine of not more than one thousand
6 dollars (\$1,000), or by both that fine and imprisonment. Any mandated reporter
7 who willfully fails to report, or impedes or inhibits a report of, physical abuse, as
8 defined in Section 15610.63 of the Welfare and Institutions Code, abandonment,
9 abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in
10 violation of this section, where that abuse results in death or great bodily injury,
11 shall be punished by not more than one year in a county jail, by a fine of not more
12 than five thousand dollars (\$5,000), or by both that fine and imprisonment. If a
13 mandated reporter intentionally conceals his or her failure to report an incident
14 known by the mandated reporter to be abuse or severe neglect under this section,
15 the failure to report is a continuing offense until a law enforcement agency
16 specified in paragraph (l) of subdivision (b) of Section 15630 of the Welfare and
17 Institutions Code discovers the offense . . .

18 Cost Recovery

19 8. Code section 125.3 provides, in pertinent part, that the Bureau may request
20 the administrative law judge to direct a licensee found to have committed a violation or
21 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
22 and enforcement of the case.

23 FIRST CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct)

25 9. At all times relevant herein, Respondent was employed as the manager of
26 the Assisted Living Unit and/or Dementia Unit at Gold Country Health Center, a residential care
27 facility for the elderly located in Placerville, California (hereinafter "facility").

28 10. Complainant is informed and believes and thereon alleges that on and
between August 18, 2005, and September 13, 2005, Client 1 resided in the Dementia Unit of the
facility and physically attacked or was abusive to several other clients within the Unit over the
three-week period. As a result, clients were fearful in their rooms and/or were afraid to leave
their rooms. Client 1 also physically attacked staff, including care givers R. M. and D.G., entered
client rooms without permission, was verbally abusive, destroyed property, and/or spit and
urinated throughout the facility.

///

///

1 11. Respondent is subject to disciplinary action pursuant to Code section
2 2878, subdivision (a), in that on and between August 18, 2005, and September 13, 2005,
3 Respondent committed acts constituting unprofessional conduct, as follows:

4 a. Respondent instructed staff, including, but not limited to, care givers P. N.,
5 R. M., D.G., and K. O., not to call 911 regarding Client 1's violent behavior toward or physical
6 abuse of other clients.

7 b. Respondent instructed staff, including, but not limited to, care givers P.N.,
8 D.G., and K.O., not to file written incident reports with the Community Care Licensing Division
9 ("CCL") regarding Client 1's violent behavior towards or physical abuse of other clients.

10 c. Respondent instructed staff, including, but not limited to, care givers R.M.
11 and D.G., not to document Client 1's violent behavior or the incidents of physical abuse in Client
12 1's and/or other clients' files or charts.

13 d. Respondent instructed staff, including, but not limited to, care givers D.G.
14 and P.N. not to contact Client 1's responsible parties (Client 1's son and Client 1's wife),
15 regarding the client's violent behavior, and to notify Client 1's step-son only.¹

16 e. Respondent threatened staff who wished to call 911 or submit written
17 incident reports to CCL regarding Client 1's violent behavior towards or physical abuse of other
18 clients, including care givers P. N. and K.O.

19 f. Respondent filed approximately three incident reports with CCL more
20 than 7 days after the date of the incidents of physical abuse.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Dishonest Acts)**

23 12. Complainant incorporates by reference as though fully set forth herein the
24 allegations contained in paragraphs 9 and 10 above.

25 ///

26 ///

27 _____
28 1. Client 1's step-son was reportedly Respondent's "boyfriend" at the time of the incidents.

1 13. Respondent is subject to disciplinary action pursuant to Code section
2 2878, subdivision (j), in that on and between August 18, 2005, and September 13, 2005,
3 Respondent committed acts involving dishonesty, as set forth in paragraph 11 above.

4 **PRAYER**

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein
6 alleged, and that following the hearing, the Bureau of Vocational Nursing and Psychiatric
7 Technicians issue a decision:

- 8 1. Revoking or suspending Vocational Nurse License Number VN 95119,
9 issued to Jennifer Spivey, also known as Jennifer Rowe Spivey;
10 2. Ordering Jennifer Spivey, also known as Jennifer Rowe Spivey, to pay the
11 Bureau of Vocational Nursing and Psychiatric Technicians the reasonable costs of the
12 investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3;
14 3. Taking such other and further action as deemed necessary and proper.

15 DATED: September 5, 2008

16
17
18 

TERESA BELLO-JONES, J.D., M.S.N., R.N.

Executive Officer

Bureau of Vocational Nursing and Psychiatric Technicians

Department of Consumer Affairs

State of California

Complainant